IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 302 OF 2006

The State of Maharashtra. ... Applicant.

V/s.

Brijmohan Shobharam Sharma ... Respondent.

S.S.Pednekar, A.P.P. for the applicant-State.

Shri Aniruddha Joshi i/b Nivit Srivastava for the respondent.

CORAM: S.C.DHARMADHIKARI, J.

DATED: 21.12.2006.

P.C. :

. This revision application is directed against the order passed by the Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai, dated 24th November 2005.

2. It appears that an application was made by the respondent-original applicant to the said Court for return of the revolver and licence pertaining thereto granted by the authorities in Delhi.

3. The respondent-applicant was arrested by Chembur police station in C.R. No.219/2005 for offence of cheating and forgery. The respondent-accused submitted arm licence issued by the appropriate authorities in the State of Nagaland for registration in Mumbai. The authorities in Mumbai suspected genuineness of the documents produced and, therefore, approached Nagaland authorities and they clarified that the licence is fake and should be seized and in any event, be not renewed.

4. The licence was seized by Chembur police station under a panchanama dated 31st May 2005 and accused was arrested. He made an application for return of arm and licence and that is how the impugned order has been passed.

5. The learned Addl. Chief Metropolitan Magistrate, while allowing the application has observed that the documents, licence shown from Delhi and other places appear to be proper prima facie in the name of the accused. However, the learned A.P.P. for the State has pointed out that there are no reasons assigned and if communication with Nagaland authorities and other documents had been perused, such conclusion could not have been

reached. He also pointed out that number of such cases had been detected and weapons/revolvers seized. This is a case where application had been opposed but the learned Addl. Chief Metropolitan Magistrate has not adverted to the objections.

6. In my view, considering the nature of the order passed and the controversy brought to my notice, if it is not interefered with in this Court's Revisional and Inherent Jurisdiction, there would be total failure of justice. The larger question about maintainability of the present application need not be decided in the facts of this case. The contention raised by Shri Joshi that this application is styled as criminal revision application and the order being interlocutory, the revision application is not maintainable, need not be decided because this Court has also exercised its inherent powers and when it is brought to my notice that no reasons are assigned for return of the licence and the revolver, it cannot be overlooked.

7. However, for properly deciding the question of return of property, interest of justice would be subserved if the matter is remanded. In order not to deprive the

respondent-applicant of an opportunity to apply for return of the property and at the same time keeping objection of the applicant-State open, it would be just and proper if application preferred by the respondent-accused is restored to file for being decided afresh on merits and in accordance with law. In the light of this, the order dated 24th November 2005 is set aside. Application is restored to file of the learned Addl.Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai, for deciding the same afresh. The learned Addl.Chief Metropolitan Magistrate, Kurla, would not be influenced by observations made in the earlier order. Upon, restoration, application will be decided within 4 weeks from today. Since the matter is directed to be decided within 4 weeks, the request of Shri Joshi to allow the respondent to retain the licence and the revolver is accepted, on the condition that the respondent-acccused files an undertaking within a period of 10 days in this Court to the effect that the respondent-accused shall abide by the final orders in the matter and if application for return of property is rejected, he will deposit the revolver and the licence with the concerned investigating officer. The respondentt- accused should state clearly in the said undertaking that

he is in possession of the said revolver and the licence and other documents pertaining thereto. Since Shri Joshi states that the property is in possession of the respondent-accused, that this order is being passed.

8. Revision application is allowed in the above terms.

(S.C. DHARMADHIKARI, J.)